

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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www.montgomerycountymd.gov/content/council/boa/index.asp

Case No. A-6153

PETITION OF TIMOTHY GARDNER
(Hearing held September 27, 2006)

OPINION OF THE BOARD
(Effective date of Opinion, November 16, 2006)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(a). The petitioner proposes the construction of a two-story addition that requires a variance of 5.50 feet as it is within twenty-eight (28) feet of the established front building line (79th Place) and a variance of 21.90 feet as it is within twenty (20) feet of the established front building line (80th Street). The required established building line from 79th Place is 33.50 feet and the required established building line from 80th Street is 41.90 feet.

Thomas Manion and David Hammer, architects, appeared with the petitioner at the public hearing.

The subject property is Lot 18, Cabin John Subdivision, located at 8007 MacArthur Boulevard, Cabin John, Maryland, 20818, in the R-90 Zone (Tax Account No. 00482012).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a two-story addition.
2. Mr. Manion testified that the existing house was built in 1938 and that it is currently located in the required setbacks for the subject property. Mr. Manion testified that this section of the County was originally zoned as R-60, but that the area has been down-zoned to R-90. Mr. Manion testified that the new construction is subject to Section 59-G-4.27 of the Montgomery County Zoning Ordinance which states:

“Residential lots reclassified from R-60 to R-90 zone.

A lot in the R-90 zone that was recorded by deed or subdivision plat in the R-60 before June 26, 1990, may be developed with one-family dwelling and accessory structures in accordance with the development standards of the R-60 zone that were in effect when the lot was recorded.”

3. Mr. Manion testified that the lot fronts on three streets: 80th Street at its western boundary, MacArthur Boulevard at its the southern boundary, and 79th Place at its eastern boundary. Mr. Manion testified that although the subject property is 10,438 square feet, the impact of the required setbacks result in a pie-shaped buildable envelope. Mr. Manion testified that the subject from must meet an established building line on 79th Place and on 80th Street, resulting in a buildable envelope that is 642.5 square feet and 6.2% of the total area of the lot. Mr. Manion testified that the resulting buildable envelope is 15 feet deep at its widest area and that most of the proposed addition will be built over the existing footprint of the house. See Exhibit Nos. 4(b) [established building line calculations], 9 [zoning vicinity map] and 12 [rendered diagram of established building line comparisons].

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the existing house is currently located in the required setbacks and that the lot fronts on three streets: MacArthur Boulevard, 79th Place and 80th Street. The Board finds that the application of the established building line requirement to the lot results in a pie-shaped building envelope that has a buildable area of 642 square feet and that is 6.2% of the total area of the lot.

The Board finds these are exceptional circumstances that are peculiar to the subject property and that the strict application of the zoning regulations will result in practical difficulties to and an undue hardship upon the property owner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the requested variances for the construction of a two-story addition are the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 5.50 feet from the required 33.50 foot (79th Place) established front building line for the construction of a two-story addition and a variance of 21.90 feet from the required 41.90 foot (80th Street) established front building line also for the construction of the two-story addition are granted subject to the following conditions:

1. The petitioner shall be bound by all of his testimony and exhibits of record, and the testimony of his witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) through 4(e) and 5(a) through 5(f).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Angelo M. Caputo, seconded by Donna L. Barron, with Wendell M. Holloway, Caryn L. Hines and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 16th day of November, 2006.

Katherine Freeman
Executive Director

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.